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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re ISAIAH S., a Person Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

PRISCILLA S.,

Defendant and Appellant.

B215301

(Los Angeles County
Super. Ct. No. CK60217)

APPEAL from an order of the Superior Court of Los Angeles County,
James K. Hahn, Judge. Affirmed.

Jack A. Love, under appointment by the Court of Appeal, for Defendant and
Appellant.

James M. Owens, Assistant County Counsel and Melinda S. White-Svec for
Plaintiff and Respondent.

In this dependency case (Welf. & Inst. Code, § 300 et seq.),¹ Priscilla S., the mother of the subject minor child (Mother), appeals from an order that terminated her parental rights. Mother contends the order should be reversed because (1) the child’s caretaker only agreed to adopt him because the dependency court stated the caretaker did not qualify as a relative caretaker for purposes of permitting him to be the child’s legal guardian and therefore the caretaker was forced into adopting the minor; (2) the “parental relationship” exception to termination of parental rights applies in this case; and (3) the “sibling relationship exception to termination of parental rights also applies here. Our review of the evidence and relevant law convinces us that none of Mother’s contentions has merit. Therefore we will affirm the order terminating her parental rights.

BACKGROUND OF THE CASE

1. Isaiah’s First Dependency Case

The minor in this case is Isaiah S. He was born on August 5, 2005. Soon thereafter he came to the attention of the Department of Children and Family Services (the Department) because Mother had a positive toxicology screen for amphetamine when he was born. In September 2005, the dependency court sustained a section 300 petition on behalf of Isaiah which alleged Mother’s history of substance abuse. Mother was given six months of reunification services and ordered to complete a drug rehabilitation program with random drug testing, a domestic violence program,

¹ Unless otherwise indicated, all references herein to statutes are to the Welfare and Institutions Code.

a parenting program, and individual counseling to address case issues, and to comply with her probation. Reunification services were terminated in March 2006 due to Mother's noncompliance with her case plan. Six months later she filed a section 388 petition, and in March 2007 the court gave her permission to live with Isaiah at the home of the minor's maternal grandmother (MGM). Then in May 2007 the court issued a home of parent order for her on the condition that Mother continue to live with MGM, and in September 2007, the court terminated jurisdiction over Isaiah because of Mother's compliance with her case plan.

2. Isaiah's Current Case

On February 15, 2008, five months after the prior dependency jurisdiction over Isaiah was terminated, he was detained by the Department and placed with MGM. Events causing this second detention began when the child abuse hotline received a report on February 5, 2008 that the minor was a possible victim of child neglect by Mother. The Department contacted the MGM who informed the social worker Mother left the MGM's home after an argument with her (Mother's) sister, and left Isaiah in the care of the MGM. The MGM did not know where Mother was, but she was expected to return home shortly. Mother called the Department's social worker and explained she had gone to Laughlin, Nevada to look for work because she could not find employment in Los Angeles due to her criminal record.² She agreed to meet with the social worker and they met on February 13, 2008. Mother told the social worker she had been clean

² According to the appellate record, Mother has twice been convicted of giving false identification to a peace officer and also convicted of battery and possession of controlled substance paraphernalia. She has been arrested many additional times.

for two years and she would take a drug test that same day. However, when the toxicology report showed Mother tested positive for methamphetamine, Isaiah was detained by the Department and the current section 300 petition was filed on his behalf. The petition alleges Mother has a five-year history of substance abuse, she is a current user of amphetamine and methamphetamine and she had a positive toxicology test for drugs on February 13, 2008, and these matters endanger the minor's physical and emotional health and safety. The petition further alleges Isaiah's prior dependency case, and it alleges that a Christopher E. is the minor's father and Mr. E. is unable to provide Isaiah with care and supervision and has failed to provide him with the necessities of life, and these things also endanger the child's physical and emotional health and safety.³ On February 21, 2008, the court detained Isaiah with the MGM.

3. *Isaiah's Sibling*

Mother has another son, Nathan N., who is Isaiah's half-brother. Nathan lives with the MGM. When Nathan was born exposed to methamphetamine in January 2004, voluntary reunification services were provided to Mother. However, she did not comply with her case plan goals and the family law court granted legal guardianship of Nathan to the MGM the following September.

³ Both Christopher E. and an Armando M. are identified in the record as alleged fathers of Isaiah. At one of the dependency court hearings Mother was asked who the minor's father is and she stated Christopher E. Asked who Armando M. is, Mother stated it is a name she "just made up" because she "didn't want to tell my baby's dad that I had a son from him because he was married." Neither of these men, real or alleged, is a party to this appeal and we do not mention them any further.

4. *Pretrial Resolution Conference; Adjudication and Disposition Hearings*

The Department filed a report for the April 3, 2008, pretrial resolution conference. The report states Mother was not maintaining contact with the Department, and the MGM reported that Mother had not contacted her and Isaiah for two months. MGM gave the social worker a cellular phone number for Mother but when the worker called the number there was no answer. The worker left a message asking Mother to contact her but there was no contact. MGM reported that Mother (who was born in March 1983) has been abusing drugs since she was 14 years old.

On March 7, 2008 Isaiah was placed by the Department to the home of his maternal second cousin, Jerry M. and his wife, Lorena M. (the caretakers). Replacement was made because the MGM reported being overwhelmed with caring for both Isaiah and Nathan, and Isaiah was acting aggressively towards Nathan. The MGM stated neither she nor caretaker Mr. M. wished to adopt Isaiah because they hoped Mother would “get better” and be able to reunify with the child, however she stated a legal guardianship would be all right. For awhile MGM continued to care for Isaiah during the day; however at some point in time, the caretakers placed him in a day care facility. Based on Mother’s repeated drug abuse, her not making contact with the Department, and Isaiah having a prior dependency case, the Department recommended that no reunification services be ordered for Mother.

After the April 3, 2008 pretrial resolution conference was continued to May 13, 2008, the Department learned that Mother had been arrested on March 27, 2008 on

charges of residential burglary. When interviewed in jail by the social worker on April 24, 2008, Mother admitted she began using marijuana and methamphetamine when she was 15 years old and her drug of choice was methamphetamine. Asked why she went back to using drugs after Isaiah's first dependency case was closed, Mother stated she had no choice but to relapse because it was difficult for her to "deal with everything." Asked what things she had to deal with, Mother mentioned that she had no job (she was fired from Motel 6 employment because she refused to leaving her receptionist position and return to her housekeeping position), she was kicked out of the MGM's home by her sister because she had no job and was not contributing financially to the house expenses, the MGM took away her car, and her sponsor passed away. Asked about her arrest, she stated she was stealing from homes to survive and buy drugs. Mother acknowledged she needed to enroll in a substance abuse program and secure a job and a good sponsor. She stated she was participating in AA/NA and parenting and drug classes at the jail and she had an upcoming criminal court hearing on April 29, 2008. She indicated she wanted to reunify with Isaiah.

Mother appeared in custody at the May 13, 2008 pretrial resolution conference and denied the allegations in the petition. Her attorney indicated adjudication and disposition would be in issue and the court set a hearing for May 27, 2008. Isaiah was ordered detained with the maternal cousin.

Mother appeared for the adjudication/disposition hearing. Her attorney made an offer of proof that Mother would testify that she was currently enrolled in a drug and

alcohol abuse program;⁴ she had successfully completed a drug program in the past and remained drug free for more than two years; in February 2008 she had problems with her support group (the MGM and Mother's sister) and had to leave home, and because her support system collapsed, she was not able to maintain her sobriety; she wanted an opportunity to participate in her new program because she is committed to regaining her sobriety and rebuilding the support group that had assisted her in maintaining a drug-free life; and she is very attached to Isaiah and wants to reunite with him. The court found the allegations in the February 21, 2008 dependency petition to be true and took arguments on disposition. The court declared Isaiah a dependent child, took custody from the parents and placed it with the Department, denied reunification services and ordered permanent placement services, ordered monitored visitation for Mother with a minimum of three hours a week, and set a section 366.26 hearing for September 23, 2008. Because Isaiah was showing signs of developmental delays and in need of Regional Center assessment, and because the court found that Mother's whereabouts were not known for awhile and she "would probably [be] unavailable most of the time" in her residential program, on June 24, 2008, the court ordered that Mother's parental rights to make educational decisions for Isaiah would be limited and the minor's caretaker maternal cousin would be his responsible person.

⁴ The record contains a letter from the Salvation Army indicating Mother entered its residential substance abuse program on May 20, 2008.

5. *Section 366.26 Hearings*

a. *September 23, 2008*

The Department's report for a September 23, 2008 hearing states that since the May 27, 2008 adjudication/disposition hearing, Mother had been in three substance abuse treatment programs. She gave no explanation to the social worker why she left the first two.

The report states Isaiah was diagnosed and determined to have disruptive behavior and expressive language disorders, and he was being diagnosed to determine if he is negatively impacted by Mother's prenatal substance abuse. He was referred for testing because he engaged in temper tantrums that include throwing himself on the floor, throwing things, hitting his caretaker and biting other children at daycare. He also did not want to share, was demanding of the caretaker's attention, and was resistant to physical affection. He had a low frustration tolerance, delayed speech, and difficulty transitioning between activities. He was defiant, noisy, messy and disorganized, had occasional night terrors, engaged in unintentional destructiveness, and was clumsy. He was participating in weekly counseling, and was scheduled to soon begin occupational therapy (to help him contain his impulsivity, and improve his understanding of spatial orientation and planning ahead) when a therapist became available. He was also slated to begin speech therapy.

His records were evaluated by the Inland Regional Center and he was found not to qualify for services for the developmentally disabled because he did not have a substantial handicap that was due to one or more of several disabilities set out in the

letter. The social worker noted Isaiah had been in his caretakers' home since March 7, 2008 and the caretakers, Mr. and Mrs. M., had shown great interest in addressing the minor's physical, medical and behavioral needs. The worker opined Isaiah appeared to have a caring relationship with them and had bonded well to their family.

Caretaker Mrs. M. indicated visitation between Mother and Isaiah began in May 2008, and visits were scheduled whenever Mother contacted the caretakers and requested a visit. Mother has their home and cell phone numbers. Mother visited with Isaiah three times in June, once for three hours and twice for approximately 45 minutes, and once in July for two hours. Isaiah also had a 90-minute visit with the MGM and his half-brother Nathan in July. In August, Mother visited with Isaiah on the day of his birthday party, arriving at seven in the evening and staying for two hours. Mother also had a short visit with him in August that was held at her substance abuse treatment center. Twice Mother scheduled visits but did not show up for them. The caretaker indicated that when Mother visits with Isaiah, the MGM and Nathan are also there, and the caretaker was of the opinion that Isaiah is more closely bonded to Nathan than to the MGM or Mother because Isaiah primarily requests to visit with Nathan and not Mother or MGM.. Mrs. M. reported that after Mother's visits, Isaiah's behavior regresses and he throws tantrums and does not listen and follow directions, and it takes several days for him to return to his regular routines and behavior.

The Department's report states that an adoption social worker met with the caretakers on July 3, 2008 and discussed responsibilities under adoption and legal guardianship. The report indicates the caretakers were interest in adoption, including

kinship adoption if it is appropriate and beneficial to Isaiah. There is no indication in the report that the caretakers were also interested in legal guardianship. The report states the caretakers acted diligently in the adoption home study process by completing paperwork and interviews in a timely manner, and it states they were eager to proceed with adoption. They stated they want to adopt Isaiah because it is best for him and they have a loving and secure relationship with him. The report notes Isaiah calls them “mom” and “dad,” is affectionate with them, is very bonded with them and with their children, and he appears to be thriving in their home. They were described as “committed to seeking out resources to address [Isaiah’s] needs and to support his well-being.” The report from a psychologist who made recommendations regarding Isaiah’s therapy needs indicates that if Mother’s parental rights were terminated, the caretakers were interested in adopting Isaiah.

Despite the repeated indications in the Department’s report that Isaiah’s caretakers were interested in adopting him, at the September 23, 2008 section 366.26 hearing, Isaiah’s attorney indicated the minor’s caretakers were undecided whether they wanted to adopt him or become his legal guardians. The record indicates that both caretakers were at the hearing. The court asked one of them (apparently Mr. M.): “What is your relationship to the mother?” The caretaker replied: “She’s my stepcousin.” The caretaker added: “We’re not related by blood.” The court stated its opinion that the caretakers “don’t fall within that right” (apparently meaning the right to a relative legal guardianship under section 366.26, subdivision (c)(1)(A)), and the court told the Department’s attorney to have the social worker advise the caretakers about

“how this works in here with respect to legal guardianship versus the adoptive process.”

The Department’s attorney stated: “I think they’ve been talked to. I have notes in my file saying this has been a concern for months.” Later in the hearing, the court observed that because Isaiah is young, and absent a relative legal guardianship, the duty of the court is to push for the most permanent plan, which is adoption. The court told one of the caretakers that she or he did not qualify as a relative. With respect to Mother’s attempts at reunification, her statements to the court indicated she had changed drug treatment programs, and her attorney stated Mother entered a residential drug program “just a week ago.”

b. *November 25, 2008 and January 20, 2009*

The September 23, 2008 hearing was continued to January 20, 2009 for completion of the home study and submission for its approval. In the meantime, a permanent plan review hearing had already scheduled for November 25, 2008. The report for that hearing indicates Mother was enrolled in a third treatment program. Isaiah was spending the Thanksgiving holiday with his caretaker family in Arizona at Mrs. M.’s sister’s home. He continued his weekly counseling/play therapy, and was still awaiting occupational therapy. He was also assessed as suffering from sensory processing deficit, which the report describes as deep tissue contact, and his caretakers were addressing that too. Mother had weekend visits with Isaiah at her treatment center whenever she contacted Mrs. M. to set up a visit and the MGM and Nathan continued to be at the visits. The adoptive home study was approved as of November 14, 2008. The caretakers were described as committed to adopting the minor and always cooperative

and accessible with the social worker, and the worker did not foresee any barriers to adoption.

The report for the January 20, 2009 section 366.26 hearing states the caretakers continued to express the desire to provide Isaiah with a permanent home. Caretaker Mrs. M. reported that Mother had not had any contact with Isaiah since before Halloween. Mother did call the child on Christmas but he was sleeping and although Mother stated she would call back, she never did. At the January 20 hearing, Mother's attorney requested a contested hearing and the matter was continued to February 11, 2009. Mother's attorney also indicated that Mother told him that she had not seen Isaiah since October because the Department did not answer her phone calls to arrange visits with the minor. The court ordered the Department to contact Mother regarding visitation.

c. *February 11, 2009*

On February 11, 2009, the Department submitted a "last minute information for the court" regarding claims that were made by Mother at the January 20 hearing, regarding why she had not been visiting Isaiah. While Mother related to the court, through her attorney, that she had not seen the minor because the Department had not been cooperating with her, when Mother went to a Department office to pick up her monthly buss pass, she told a social worker that she had not seen the child because caregiver Mrs. M. had not taken him to Mother's inpatient treatment center for visits. Thereafter, when the social worker spoke with Mrs. M. about that, Mrs. M. stated that prior to sometime in October 2008, Mother would always call the caregivers when she

wanted to visit with Isaiah. On one occasion in October 2008, Mother scheduled a visit and was with her boyfriend who lives near the caregivers' home, but Mother failed to keep the visit and never called to cancel it, and since that time, Mother stopped calling her for visits. Mrs. M. stated she (Mrs. M.) informed Isaiah's attorney that Mother had previously always contacted her, not the Department, to arrange visits. Mrs. M. asked the social worker to find another monitor for Mother's visits because Mrs. M. no longer felt comfortable monitoring them due to animosity that Mother and her family have for the caretakers.

The social worker then spoke with Mother and Mother complained that the caretakers had not brought Isaiah to visit her the past weekend. Asked if she had called the caretakers to set up the visit, Mother did not respond. Mother acknowledged that in the past she contacted the caregivers to arrange visits, but she did not respond when asked why she stopped doing so in October 2008. Asked if she had called the caregivers or the social worker to set up a visit for the previous weekend, she stated she had not because the telephone in the residential program was not working. Mother asked if her sister could monitor visits and was told that if the sister submitted to a live scan and was cleared and agreed to abide by the Department's monitor requirements that would be permitted. The sister and the MGM came to the Department office and the sister live scanned and signed the monitor agreement. She was cleared to monitor visits, and thereafter another of Mother's sisters was also approved to monitor. Mother was informed that the aunts could contact the caregiver to arrange visits. Six days later Mother had a visit with Isaiah. Prior to that visit, Isaiah told Mrs. M. he was afraid to

visit Mother because his older brother was mean to him and had hit him, but after the visit Isaiah declared he had fun and wanted to see his brother again.

Mother testified at the hearing on February 11, 2009. She stated Isaiah lived with her from May 2007, when the court permitted him to go live with her, to February 2008, and during that period of time, Mother and Isaiah also lived with Nathan, Nathan's legal guardian who is the MGM, and Mother's sister.

Mother stated she was still living at the residential substance abuse program she entered five months earlier and she had her first visit with Isaiah there "last Sunday." She stated that prior to moving to that treatment facility she visited with the minor once a week for three hours from March to October 2008, and the visits took place at the MGM's home. However, she also stated that from May to August 2008 she was in a Salvation Army treatment facility and MGM would bring Isaiah and Nathan there to visit with her. Asked why she left the Salvation Army program, she stated she was kicked out of the program. After she left the Salvation Army facility, she went to another residential treatment program and was there for three weeks before she was asked to leave because she had seizures and required medication. While she was there, the caretakers brought Isaiah twice for visits. After she left that program she went to her current program.

Asked why she did not visit with Isaiah between sometime in October 2008 and "last Sunday," Mother stated she called the social worker and left her messages, and spoke with the social worker's supervisor, and she (Mother) was "just waiting there in the program, hoping that they would call me back. It was just all of a sudden thing."

She acknowledged that it was the practice for her to call the caretakers and set up visits, and when she was asked why she did not call the caretakers about visitation after October 2008, Mother stated that she asked caretaker Mrs. M. if she would bring Isaiah for a visit after she returned from Arizona (perhaps meaning the Thanksgiving trip to Arizona), and Mrs. M. “never brought him back to me.” Asked again why she did not call the caretakers about visits, she stated she was “a little upset of the fact they didn’t bring them to me.” Mother stated she did not know if Isaiah and Nathan had visits with each other since October 2008. She stated Nathan came with Isaiah to the visit she had just had on Sunday and their visit lasted three hours and then MGM had to leave. Asked how Isaiah reacted to seeing her, she stated he was excited. She stated she is not able to speak with Isaiah on the telephone.

Although Mother testified that prior to moving to her current treatment facility she visited with Isaiah once a week for three hours from March to October 2008, when she was asked later in the hearing about visitation with Isaiah in the period of March to May 2008, Mother stated she did not visit with Isaiah then during that period because she was in jail and when she left jail she “went straight to the [Salvation Army] program.” She stated she was in jail for three weeks. As noted above, Mother was arrested on March 27, 2008 on charges of residential burglary. She did not enter the Salvation Army program until May 20, 2008. Thus, by her own statement of how long she was in jail, there was a period of several weeks when she was out of jail and did not visit with Isaiah. Based on her testimony that she had visits with Isaiah every week, Mother challenged the social worker’s September 2008 report that stated otherwise.

However, later in the hearing she agreed to Isaiah's attorney's question that since the minor was detained in February 2008, she had visited with him a total of six or seven times.

As noted above, Isaiah was born on August 5, 2005 and first detained from Mother by the Department soon thereafter. Not until March 2007 was Mother permitted to live with him, and thereafter in February 2008 he was detained again by the Department. Based on that timeline, Mother acknowledged that Isaiah had not lived with her for much of his lifetime. She also acknowledged that it was her choice to not call the caretakers from October through January to schedule a visit with Isaiah. Asked if she had tried to call the minor on the telephone after Christmas 2008, she stated she had not.

The attorneys for the Department and Isaiah argued that parental rights should be terminated because the parental relationship and sibling relationship exceptions to termination of parental rights do not apply. Mother's attorney disagreed, saying both exceptions apply, and he further argued that although the caretakers initially indicated they wished to become the minor's legal guardian, they "were persuaded by the Department that the only path that they could follow would be an adoption and that guardianship was not available to them."

Finding that Isaiah is adoptable, and further finding that neither Mother's nor Nathan's relationship with Isaiah rose to the type of relationship that would precluded a termination of parental rights under section 366.26, subdivision (c)(1)(B)(i) or (v), the

court terminated Mother's parental rights. The caretakers were designated the minor's prospective adoptive parents.

CONTENTIONS ON APPEAL

Mother contends that several of the section 366.26, subdivision (c)(1) "exceptions" to termination of parental rights apply in this case and therefore termination of her parental rights must be reversed.

DISCUSSION

1. "Relative Caregiver" Exception to Terminating Parental Rights

Although adoption is the Legislature's preferred permanent plan (§ 366.26, subd. (b)), under section 366.26, subdivision (c) (1), the Legislature has provided certain exceptions to that preference. One exception applies when the dependent minor is living with a relative who is not able or willing to adopt the child because of reasons not having to do with an unwillingness to accept the legal or financial responsibility that accompanies adoption, but who is willing to become the minor's legal guardian. If such relative caretaker is able to provide the child with a stable and permanent environment through legal guardianship, and if removing the child from the caretaker's home would be detrimental to the child's emotional well-being, then the dependency court will choose legal guardianship instead of adoption. (§ 366.26, subd. (c) (1) (A).)⁵

⁵ Without providing this court with a copy of an assembly bill analysis of the addition of subdivision (c) (1) (A) to section 366.26, Mother states in her opening brief on appeal that the assembly bill analysis shows that subdivision (c)(1)(A) was added to section 366.26 because courts and "agencies" were pressuring relatives of dependent minor children into adopting the children rather than becoming their legal guardians.

Mother observes that early after Isaiah was replaced to the caretakers' home, the MGM indicated to the social worker that neither the MGM nor the caretakers wished to adopt Isaiah because they hoped Mother would be able to reunite with him. Mother contends on appeal that the trial court, at the September 23, 2008 hearing, misadvised caretaker Mr. M. that he was not a relative that could be considered for legal guardian status for Isaiah and therefore his only option was to seek adoption of the minor. Mother contends that by making that statement to Mr. M., the court pressured him into choosing adoption with the result that Mother's parental rights were terminated. Mother contends that although the term "relative" is not defined in section 366.26, the definition of the term "relative" in sections 361.3, 319 and 11362⁶ demonstrates that Mr. M. does come within the category of a relative caretaker and therefore, Mother and the caretakers are the victims of the court's harmful error. Mother contends the caretakers are victims because they were not able to choose legal guardianship and were pressured into choosing adoption because they did not want to risk having the minor replaced to another home, and Mother asserts she is a victim because her parental rights were terminated. The problem with Mother's analysis is that it leaves out very relevant case history.

⁶ With the exceptions of a variance in the use of an apostrophe and the use of "these" or "those," sections 319, 361.3, and 11362 all define "relative" as "an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words 'great,' 'great-great,' or 'grand' or the spouse of any of these persons even if the marriage was terminated by death or dissolution."

First, it was in March 2008 when MGM told the social worker that neither she nor the caretakers wished to adopt Isaiah because they hoped Mother could reunify with him. That statement was made soon after the minor was placed with the caretakers, which was eleven months prior to the February 2009 section 366.26 hearing at which Mother's parental rights were terminated. Things changed during those eleven months. After they took Isaiah into their home, the caretakers and their children bonded with Isaiah, and the caretakers became advocates for his health and welfare.

Second, as noted above, the Department's report for the September 23, 2008 hearing states that an adoption social worker met with the caretakers on July 3, 2008, and discussed responsibilities under adoption *and legal guardianship*. The report indicates the caretakers were interested in adoption, including kinship adoption if it is appropriate and beneficial to Isaiah. There is no indication in the report that the caretakers were also interested in legal guardianship. Quite the contrary. The report often refers to the caretakers as prospective adoptive parents. Moreover, the *September 9, 2008* report from the psychologist who made recommendations regarding Isaiah's therapy needs also indicates that if Mother's parental rights are terminated, the caretakers are interested in adopting Isaiah. Further, in the Department's September 23, 2008 report the caretakers are described as having been diligent in the adoption home study process by completing paperwork and interviews in a timely manner. They are also described as being eager to proceed with adoption. They stated they want to adopt Isaiah because it is best for him and they have a loving and secure relationship with him. Isaiah calls them "mom" and "dad," is affectionate with them, is very bonded with

them and with their children, and he appears to be thriving in their home. They were described as “committed to seeking out resources to address [Isaiah’s] needs and to support his well-being.”

Therefore, at the September 23, 2008 hearing when Isaiah’s attorney indicated the minor’s caretakers were undecided about whether they wanted to adopt him or become his legal guardians, the attorney’s statement was made *despite* the repeated indications in the Department’s report that (1) Isaiah’s caretakers were committed to adopting him, and (2) *they had already followed up on that commitment by completing the steps necessary for the Department’s adoption process to go forward*. As for the Department’s attorney’s statement that the caretakers had been “talked to” and “this has been a concern for months,” there is no indication in the record that any social worker from the Department advised the caretakers that they could not qualify to become the minor’s legal guardians. *Quite the opposite*. The adoption social worker advised the caretakers of what their responsibilities would be under either option, and by the time of the September 23 hearing the caretakers had already chosen adoption and proceeded with the steps necessary to achieve it. Thus, at most, when the court opined that the caretakers could not qualify as legal guardians, it left a question in their minds about how relative legal guardianship works, but such a question was not relevant since they had already chosen adoption. Moreover after that hearing, nearly five months passed before Mother’s parental rights were terminated. Nothing in the record indicates that during that five-month period the caretakers gave a thought to the trial court’s statements or reconsidered whether they wanted to adopt Isaiah. Therefore, whatever

the quality of the trial court's advisement to the caretakers about relative legal guardianship, the record does not indicate the caretakers were impacted by it, and Mother's assertion that the caretakers were pressured into adopting Isaiah because they did not want to give him up finds no evidentiary support in the record.

2. *"Parental Relationship" Exception to Termination of Parental Rights*

Under section 366.26, parental rights over an adoptable child are not terminated when the dependency court "finds a compelling reason for determining that termination would be detrimental to the child due to one or more of [enumerated] circumstances." One of those circumstances is that "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) Mother contends her relationship with Isaiah is such that this parental relationship exception to termination of parental rights applies in this case and her parental rights should not have been terminated.

The exception requires a compelling showing that the parent has had regular visitation and contact with the minor, and that continuing the parent's relationship with the minor would be beneficial to him, and termination of parental rights would be detrimental to him. Here, the record does not support Mother's position.

To begin with, Mother has not maintained regular visitation and contact with Isaiah. Mother seeks to explain that deficit by stating that after the Department detained the minor on February 15, 2008, she was homeless for a month, in jail for the next two months, and then in residential drug treatment programs for the last nine months. Aside from the fact that all of those things were the result of choices she made in her life, they

do not absolve her from the necessity of showing that she made regular visitation and contact with Isaiah. There is no evidence that during any of those periods she made contact with the child by telephone or mail. Moreover, there was a period of time between jail and her first residential treatment program when Mother could have visited with Isaiah but did not. Further, there is evidence that the caretakers arranged visits for Mother when she contacted them and asked to visit with Isaiah, but Mother's requests were few and far between up until sometime around Halloween in the fall of 2008, and thereafter, she let three months go by without seeing the minor. At the February 11, 2009 section 366.26 hearing, Mother attempted to blame the social worker for her failure to visit with Isaiah during the three months preceding the hearing, asserting that she tried to arrange visits through the Department and was unsuccessful. However, she acknowledged that it was the practice for her to call the caretakers, not the social worker, to set up visits, and she stated that she let the three months go by without calling them to arrange visits because she was upset with them. Thus, Mother's assertion that she visited with the minor "when she was allowed to" is at odds with the record.

Moreover, the record would not support a finding that Mother's relationship with Isaiah was such that terminating her parental rights would be detrimental to him.

Caretaker Mrs. M. indicated to the social worker that when Mother visits with Isaiah, the MGM and Nathan are also there, and the caretaker was of the opinion that Isaiah is more closely bonded to Nathan than to the MGM or Mother because Isaiah primarily requests to visit with Nathan and not Mother or MGM. Moreover, Mother's visits had

a negative impact on Isaiah. Mrs. M. reported that after Mother's visits, Isaiah's behavior regresses and he throws tantrums and does not listen and follow directions, and it takes several days for him to return to his regular routines and behavior.

We reject Mother's contention that the Department "may not argue that the benefit finding is not supported by the evidence where it failed to provide information about the quality of the parent's visits with the child during the time preceding the section 366.26 hearing, reporting only the regularity of the visits without evaluating their success." The "benefit to the child" element of the parental relationship exception was Mother's burden to demonstrate. She is the party claiming the parental relationship exception, not the Department. She could have had MGM testify about the quality of her visits and relationship with Isaiah. What the evidence does show is that the minor is very well bonded to his caretakers and their children, he is affectionate with the caretakers, calls the caretakers "mom" and "dad," and appears to be thriving in their home. Mother has not demonstrated how relegating the minor to a legal guardianship status would be more beneficial to him than the permanent status of adoption by the caretakers.

3. *"Sibling Relationship" Exception to Termination of Parental Rights*

Section 366.26, subdivision (c) (1) (B) (v) provides that parental rights over an adoptable child are not terminated if the dependency court finds a compelling reason for determining that termination would be detrimental to a child because "[t]here would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether a child was

raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption."

The exception requires a showing that termination of parental rights would be detrimental to the minor child, and to meet that showing, the parent must prove that termination would substantially interfere with a sibling relationship, and also prove that it is more in the minor's best interest to maintain that sibling relationship than to provide the child with a permanent home through adoption.

Once again, demonstrating this exception to the trial court's satisfaction was Mother's burden to carry and she did not present the evidence to carry it. There is insufficient evidence with which to find that depriving Isaiah of a permanent home through adoption by his caretakers would be in his best interests because of his relationship with his half-brother Nathan. The MGM was not called to testify and provide evidence of the strength of the relationship between Isaiah and Nathan. Nor did Mother provide enlightenment to the court.

Since Nathan and the MGM apparently visited with Mother at the same times that Isaiah visited with her, Mother's own lack of interest in maintaining the sibling relationship between the boys is demonstrated by how few visits she arranged to have with Isaiah. Mother also testified she did not know if Isaiah and Nathan had visits with each other during the three-month period from November 2008 to February 2009 when she did not visit with Isaiah.

Isaiah was born on August 5, 2005 and detained from Mother by the Department soon thereafter. He was placed with MGM, with whom Nathan also lived. Isaiah was then removed from MGM's home in March 2008 and replaced to the home of his caretakers, the M's, at least in part because Isaiah was being aggressive towards Nathan. Thereafter, the boys were together when Isaiah came to MGM's home for day care. However, it is not clear how long that lasted because a psychologist's assessment of Isaiah, dated September 2008, states the child was then currently enrolled in a day care facility. Thus, the boys lived together for two years and seven months, during much of which time Isaiah was an infant, and by the time Mother's parental rights were terminated, the boys had not lived together for eleven months.

It is true that Mrs. M. reported that it was Nathan, and not Mother or MGM, whom Isaiah was most interested in seeing when he went to visit with Mother. However, she also reported that on one occasion Isaiah did not want to visit with Nathan because he believed that Nathan was mean to him, and it took actually going to the visit for Isaiah to realize that visiting Nathan was fun and he wanted to see Nathan again. There is no evidence that the children have shared such "significant common experiences," ha[ve] "existing close and strong bonds," or have any other characteristic in their relationship such that it can be said that ongoing contact between them is so in Isaiah's "best interest, including [his] long-term emotional interest" that it outweighs the benefit Isaiah would receive from being adopted by his caregivers. (§ 366.26, subd. (c)(1)(B)(v).) "In enacting [the sibling relationship] exception, the [L]egislature was concerned with preserving long-standing relationships between siblings which

serve as anchors for dependent children whose lives are in turmoil.” (*In re Erik P.* (2002) 104 Cal.App.4th 395, 404.) A review of the record does not produce a sense that this quoted language applies to Isaiah and Nathan’s relationship.

DISPOSITION

The order from which Mother has appealed is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

CROSKEY, Acting P. J.

WE CONCUR:

KITCHING, J.

ALDRICH, J.